Evaluation of Options for the U.S. Nuclear Regulatory Commission Involvement

The options presented below assume that U.S. Nuclear Regulatory Commission (NRC) has jurisdiction over at least part of the residual radioactivity at the Hunter's Point Shipyard (HPS) site.

Option 1: Rely on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process and U.S. Environmental Protection Agency (EPA) oversight with no NRC involvement

Description: NRC would rely on the CERCLA process and EPA's regulatory oversight of the ongoing Navy remediation of all radioactive material at the HPS site. NRC would not exercise its regulatory authority and would not require compliance with its decommissioning regulations. Furthermore, NRC would not conduct any formal regulatory reviews or participate in the ongoing stakeholder comments of the Navy's remediation. However, for Navy contractors with NRC licenses, NRC would continue its ongoing and routine oversight to ensure that the Navy contractor remediation activities (e.g., handling, laboratory testing, and storage of radioactive materials) are safely conducted.

Basis: NRC can reasonably rely on the CERCLA process and EPA's regulatory oversight because the process: (1) addresses all the radioactive material; and (2) should result in protection of public health and safety and the environment equivalent to that which would be provided if the NRC's decommissioning process was used. Furthermore, NRC assumes that the CERCLA process would be sustained during the long time period when protection of the restricted release areas primarily depends on the effectiveness of institutional controls, engineered controls, and the combined Navy and EPA Five Year Review oversight required by CERCLA.

Pros:

- This option avoids dual NRC-EPA regulation, thus avoiding potential delays and higher costs.
- No NRC resources would be needed.
- This option is consistent with the CERCLA permit waiver provision (see Option 3 discussion in the body of the Commission Paper).

Cons:

- NRC could not guarantee that the NRC's decommissioning requirements have been met.
- NRC would not be informed about the development of future Navy remediation plans and activities for other HPS parcels. NRC would thus lack information to confirm the sustained implementation of the CERCLA process and EPA oversight over the next 10 years.

- NRC would not be informed about the site-specific establishment of post remediation plans for the use of institutional controls and engineered controls at restricted release areas. Such plans would be necessary for maintaining protection of public health and safety during he long post remediation time period.

- The staff would not be able to assist the California Department of Public Health (DPH) in its request for technical assistance.

- NRC would not be able to provide timely responses to stakeholder questions.

Option 2: Rely on the CERCLA process and EPA oversight with limited NRC involvement to stay informed about the ongoing CERCLA process

Description: NRC would rely on the CERCLA process and EPA's regulatory oversight of the ongoing Navy remediation of all radioactive material at the HPS site. NRC would not require compliance with its decommissioning regulations in the license termination rule (LTR) and would not conduct any formal regulatory reviews or participate in the ongoing stakeholder comments of the Navy's remediation. For Navy contractors with NRC licenses, NRC would continue its ongoing and routine oversight to ensure that the Navy contractor remediation activities (e.g., handling, laboratory testing, and storage of radioactive materials) are safely conducted. Unlike Option 1, NRC would take the limited actions discussed below to keep informed about the remediation. However, NRC would retain the ability to comment on the Navy's remediation, if necessary, to justify NRC's continued reliance on the CERCLA process.

NRC would stay informed until completion of the Navy's remediation of the remaining 6 parcels, which is expected to occur over the next 10 years. The staff would take a risk informed approach to focus on those elements of the Navy's remediation that are most important to the protection of public health and safety such as formal establishment of the site-specific institutional controls and engineered controls, if used for the restricted release areas of the site.

NRC would stay informed by using existing mechanisms such as standard Navy distributions and availability of the Administrative Record (e.g. records of decision and completion documents such as the finding of suitability to transfer). If necessary, NRC would request access to documents. Staff would read key documents and possibly conduct one site visit and progress meeting each year.

NRC has taken a similar approach and relied on EPA oversight and CERCLA remediation for the decommissioning of a few NRC licensed sites (e.g., Lake City Army Ammunition Depot site, Safety Light site, and U.S. Army Corps of Engineers Formally Utilized Site Remediation Program (FUSRAP) sites). For these sites, NRC has also retained limited involvement, but NRC's limited involvement included confirming compliance with the dose criteria in the NRC's decommissioning regulations for the purpose of terminating the license. For these cases, reliance on EPA oversight was more efficient for the licensees because dual NRC-EPA regulation was avoided.

Basis: The basis for this option is the same as stated above for Option 1.

Pros:

- This option avoids dual NRC-EPA regulation, thus avoiding potential delays and higher costs.

- NRC remains generally aware of site remediation under the CERCLA process and any new information about terminated AEC-licensed material. NRC would have assurance that the CERCLA process is being properly implemented for the remaining 6 parcels of the site over the next 10 years.

- NRC remains generally aware of the site-specific establishment of the institutional controls and engineered controls for the restricted release areas and associated regulatory oversight under the CERCLA process.

- NRC would be able to provide timely responses to stakeholder questions.

- This option is consistent with the CERCLA permit waiver provision (see Option 3 discussion in the body of the Commission paper).

Cons:

- NRC could not guarantee that NRC's decommissioning requirements have been met.

- Certain stakeholders might disagree with this option and prefer greater NRC involvement.

- Maintaining general awareness and knowledge transfer over the next 10 years will require more resources than Option 1 (approximately 1 FTE over 10 years).

- The staff would not be able to assist the California DPH in it's request for technical assistance.

Option 3: NRC Regulatory Oversight through the Navy Master Materials List (MML)

Description: NRC would exercise its regulatory authority over the ongoing remediation of radioactive contamination at the HPS rather than rely on EPA's oversight. NRC would require the Navy to place the HPS site under a permit that would be governed by the MML. Remediation of the site would be done in compliance with NRC's decommissioning regulations. NRC would need to develop an appropriate oversight process for this site under the MML, including: 1) coordinating compliance with NRC's decommissioning regulations and the CERCLA process; 2) reviewing and commenting on documents prepared by the Navy; 3) developing inspection plans, including confirmatory measurement plans in coordination with the NRC Navy MML Project Manager; and 4) coordinating with ongoing regulatory oversight by EPA and the State of California. NRC's involvement would only be during remediation. This approach is consistent with NRC's decommissioning regulations for restricted release sites where there would be no NRC involvement during the post license termination institutional control time period after NRC approval of post termination plans for institutional control, monitoring, and maintenance.

Basis: NRC would exercise its jurisdiction because of the assumed presence of terminated AEC-licensed material, even though it could be commingled with other radioactive material that is not under NRC's jurisdiction.

Pros:

- Compliance with NRC's decommissioning regulations would be demonstrated.
- Public confidence might be increased with the addition of NRC involvement.
- NRC would be able to provide assistance to California DPH.

Cons:

- This option would create dual NRC-EPA regulation by: 1) requiring demonstration of compliance with all of NRC's decommissioning requirements in addition to the CERCLA requirements; and 2) adding another "layer" of regulatory oversight to the existing Federal, State, and City oversight. It is not clear if dual NRC-EPA regulation would provide a significant benefit to protection of public health and safety.
- Different regulatory approaches and methods between NRC and EPA could be difficult and time consuming to resolve and would add unnecessary complexity to an already complex site and remediation process. Resolving and coordinating different regulatory approaches and comments could delay remediation schedules with no benefit to the protection of public health and safety.
- Implementing this option would require more resources than Options 1 and 2. Establishing an NRC oversight process for this site, and implementing the process during remediation would involve approximately 20 FTE over 10 years. The technical and regulatory complexity of the site would necessitate a major commitment of a multidisciplinary team over approximately 10 years until remediation of all parcels has been completed.
- Choosing this option would arguably be inconsistent with DD-99-7, 49 NRC 299 (1999), in which the NRC found the CERCLA's permit waiver provision includes within its scope NRC licenses and permits (see discussion in Option 3 in the body of the Commission Paper).